IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6383 OF 2005

Mr. Rajesh Vyas ...Applicant
Vs.
The State of Maharashtra ...Respondent

Mr. A.P. Mundargi i/by Mr. Rajeev Sawant for the Applicant.
Ms M.H. Mhatre, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : OCTOBER 25, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Applicant and the learned A.P.P. for the State. The Applicant alongwith the co-accused applied for Anticipatory Bail as there was an apprehension that they will be arrested in connection of the offence registered under section 420 read with section 34 of the Indian Penal Code with Economic Offences Wing, Unit 1, Mumbai. By order dated 26th August, 2005, the learned Additional Sessions Judge, Mumbai allowed the Application made by the Applicant and the other co-accused and granted Anticipatory Bail subject to conditions incorporated therein. One of the conditions was to remain present on every Monday and Thursday for a period of one month and to assist investigation.

2. An Application was moved before the learned

Sessions Judge for cancellation of Anticipatory Bail. On 19th September, 2005, the learned Additional Sessions Judge partly allowed the Application and cancelled the Anticipatory Bail granted in favour of the Applicant. The only ground on which the Anticipatory Bail was cancelled was that the Applicant herein failed to appear and attend the Police Station on 29th August, 2005 and 01st September, 2005.

3. The prayer in the present Applicant is for quashing the order dated 19th September, 2005.

4. The learned Counsel appearing for the Applicant submitted that Anticipatory Bail cannot be cancelled only on the ground that on two days the Applicant could not attend the Police Station. The learned Counsel pointed out that the case of the first informant was that the Applicant alongwith co-accused received a sum of Rs.01,30,000/- as commission and brokerage and inspite of receiving the amount, the Applicant and co-accused failed to release loan. He pointed out that the sum of Rs. 01,30,000/- was deposited by the Applicant with the Investigating Officer on 22nd June, 2005.

5. In the reply which is filed to this

Application by the Investigating Officer, it is stated in paragraph No.7 as under:

> 7. I say that during the course of investigation, it was revealed that the applicant/accused had adopted same modus operandi and has cheated (1) Shri Ravikishore Mane for Rs.1,88,000/-; (2) Shri Prashant Kulkarni, for Rs.1,87,500/- and (3) Shri. Umesh Shine for Rs. 4,80,500/- by taking processing fees as mentioned against their names. I say that complaints have been received by our branch from above said three persons.

Yesterday, the learned Counsel for the Applicant has handed over three cheques representing the aforesaid amounts drawn in favour of the respective persons to the Investigating Officer on the condition that without obtaining the orders of the appropriate court, the said cheques shall not be encashed.

6. I have considered the submissions. Perusal of the order dated 19th September, 2005 shows that the Anticipatory Bail was cancelled only on the ground that the Applicant did not attend the office of the

Investigating Officer on two dates. This is not a case where the learned Additional Sessions Judge has recorded a finding that the Applicant has misused the liberty granted in any manner. Now the Applicant has come forward to deposit three cheques as narrated above on the basis of allegation made in affidavit in reply. As Anticipatory Bail was cancelled on limited ground, in my view, the order passed by the learned Additional Sessions Judge on 19th September, 2005 deserves to be quashed and set aside and order dated 26th August, 2005 deserves to be restored. When a query was made by me to the learned A.P.P. as to whether the Investigating Officer requires attendance of the Applicant on a particular date, a statement was made that the Applicant may be directed to attend the concerned Police Station as and when called upon to do so.

7. Hence, I pass the following order:

: O R D E R :

i) The order dated 19th September, 2005 is quashed and set aside and the order dated 26th August, 2005 passed in Anticipatory Bail Application No.1163 of 2005 by the learned Additional Sessions Judge,

Mumbai is restored. However, clause No.3 of the order dated 26th August, 2005 will stand modified so far as present Applicant is concerned and it is directed that the Applicant will remain present before the Investigating Agency as and when called upon to do so till the filing of the chargesheet and will co-operate for investigation.

ii) It is clarified that the action of handing over cheques in the sum of Rs.01,88,000/-, Rs.01,87,500/- and Rs.04,80,500/- by the Applicant to the Investigating Agency is without prejudice to the rights and contentions of the Applicant and same shall not be construed as admission of guilt on the part of the Applicant.

iii) The Application is disposed of in above terms.

JUDGE